

a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

ADMINISTRATIVE ASSESSMENT AND
MARKETING SERVICE DEDUCTION

§ 1134.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 13th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including milk subject to the provisions of § 1134.42(e) but excluding such milk in the case of a cooperative association which is a handler of milk subject to the provisions of § 1134.42(e)) and such handler's own production;

(b) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1134.43(d) and other source milk allocated to Class I pursuant to § 1134.44 (a)(7) and (a)(11) and the corresponding steps of § 1134.44(b), except such other source milk that is excluded from the computations pursuant to § 1134.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant during the month that exceeds the skim milk and butterfat subtracted pursuant to § 1134.76(a)(2).

[47 FR 42991, Sept. 30, 1982, as amended at 58 FR 27896, May 11, 1993]

§ 1134.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of his own production) pursuant to § 1134.73, shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market admin-

istrator on or before the 13th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such services from a cooperative association.

(b) For producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members, and on or before the 14th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative association, furnishing a statement showing the amount of the deductions and the quantity of milk on which the deductions from each producer was computed.

PART 1135—MILK IN THE SOUTHWESTERN IDAHO—EASTERN OREGON MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: 7 U.S.C. 601-674.

SOURCE: 46 FR 28612, May 28, 1981, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1135.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1135.2 Southwestern Idaho-Eastern Oregon marketing area.

Southwestern Idaho-Eastern Oregon marketing area, hereinafter called the "marketing area," means all territory within the boundaries of the following Idaho and Oregon counties, including all reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties:

IDAHO

Ada	Gooding
Adams	Jerome
Blaine	Lincoln
Boise	Minidoka
Camas	Owyhee
Canyon	Payette
Cassia	Twin Falls
Elmore	Valley
Gem	Washington

OREGON

Baker	Malheur
Grant	Union
Harney	

§ 1135.3 Route disposition.

Route disposition means any delivery of a fluid milk product classified as Class I milk from a plant to a retail or wholesale outlet (including any delivery through a distribution point or a vender and disposition from a plant store or through a vending machine) except a delivery to another plant.

§ 1135.4 Plant.

Plant means the buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities used only as a distribution point for storing

packaged fluid milk products in transit or used only for reloading milk from one tank truck to another for transshipment shall not be a “plant” under this definition.

§ 1135.5 Distributing plant.

Distributing plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1135.6 Supply plant.

Supply plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which fluid milk products are transferred during the month to a pool distributing plant.

§ 1135.7 Pool plant.

Except as provided in paragraph (c) of this section, *pool plant* means:

(a) A distributing plant from which there is:

(1) Route disposition (except filled milk) in the marketing area during the month equal to not less than 10 percent of the Grade A fluid milk products received at such plant (including milk diverted from such plant by the plant operator pursuant to § 1135.13); and

(2) Total route disposition (except filled milk) during the month equal to not less than 25 percent of such receipts. A unit consisting of two or more distributing plants operated by a handler shall be considered as one distributing plant for the purpose of meeting this requirement if the handler notifies the market administrator in writing before the first day of the month that the plants should be considered as a unit. The unit shall continue from month to month thereafter without further notification. If, however, there is any change in the composition of the unit, the handler shall notify the market administrator in writing on or before the first day of the month such change is to be made.

(b) A supply plant from which during the month the volume of fluid milk products, except filled milk, transferred to pool distributing plants is 25

percent or more of the Grade A milk received at the plant from dairy farmers (including producer milk diverted from the plant by the plant operator but excluding producer milk diverted to the plant pursuant to § 1135.13), subject to the following conditions:

(1) Any supply plant that has qualified as a pool plant in each of the immediately preceding months of September through February shall be a pool plant in each of the following months of March through August unless written request for nonpool status for any such month is filed by the plant operator with the market administrator prior to the first day of any such month. In such case, nonpool status will be effective until the plant again qualifies as a pool plant by meeting the transfer requirements; and

(2) The volume of fluid milk products included as qualifying shipments to a distributing plant pursuant to this paragraph shall be reduced by the volume of any fluid milk products transferred or diverted by such pool distributing plant operator to the supply plant or to any other plant under the control of the supply plant operator.

(c) The term “pool plant” shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section that also meets the pool plant requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, was disposed of as route disposition during the month in such other Federal marketing area than was disposed of as route disposition in this marketing area, and which is fully subject to the classification and pricing provisions of such other order;

(3) A distributing plant qualified pursuant to paragraph (a) of this section that also meets the pool plant requirements of another Federal order on the basis of route disposition in such other marketing area, and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month as route disposition in this marketing area than is disposed of in such other marketing area but which plant is,

nevertheless, fully regulated under such other Federal order;

(4) A supply plant qualified pursuant to paragraph (b) of this section that also meets the pool plant requirements of another Federal order and from which greater qualifying transfers are made during the month to plants regulated under such other order than are made to plants regulated under this order, unless during the months of March through August the transfers to the other order plant are classified as Class II or Class III milk and the operator of the supply plant elects to retain automatic pooling under this part;

(5) A distributing plant from which less than an average of 300 pounds of Class I milk per day, except filled milk, is disposed of in the marketing area during the month; or

(6) Milk receiving and storage facilities that are on the same premises as a pool plant and are not approved by any regulatory agency for the receiving, processing or packaging of any fluid milk product for Grade A disposition.

[46 FR 28612, May 28, 1981, as amended at 46 FR 62811, Dec. 29, 1981; 51 FR 12835, Apr. 16, 1986]

§ 1135.8 Nonpool plant.

Nonpool plant means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *Other order plant* means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) *Partially regulated distributing plant* means a distributing plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(d) *Unregulated supply plant* means a supply plant that does not qualify as a pool supply plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(e) *Exempt distributing plant* means a distributing plant defined in § 1135.7(c)(5).

§ 1135.9 Handler.

Handler means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to milk of a producer that is diverted pursuant to § 1135.13 for the account of the cooperative association;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk on the basis of weights determined from its measurement at the farm and butterfat and protein tests determined from farm bulk tank samples;

(d) Any person, except a cooperative association, with respect to milk that it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such person and which is delivered during the month for the account of such person to the pool plant of another handler or diverted pursuant to § 1135.13, subject to the following conditions:

(1) Such person (who, if qualified pursuant to this paragraph, shall be known as a "proprietary bulk tank handler") must operate a plant located in the marketing area at which milk is processed only into Class II or Class III products; and

(2) Prior to operating as a handler pursuant to this paragraph, such person must submit to the market administrator a statement signed by the applicant and the operator of the pool plant to which the milk will be delivered specifying that the applicant will be the responsible handler for the milk;

(e) Any person in his capacity as the operator of a partially regulated distributing plant;

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(f) Any person defined as a producer-handler;

(g) Any person in his capacity as the operator of another order plant described in § 1135.7(c) (2) and (3);

(h) Any person in his capacity as the operator of an unregulated supply plant; and

(i) Any person in his capacity as the operator of an exempt distributing plant.

[46 FR 28612, May 28, 1981, as amended at 59 FR 15324, Apr. 1, 1994]

§ 1135.10 Producer-handler.

Producer-handler means any person who meets all of the following conditions:

(a) Operates a dairy farm and a distributing plant at which Grade A milk of his own production is processed and packaged, and from which there is route disposition in the marketing area;

(b) Receives no milk or fluid milk products from any source other than pool plants, other order plants, and bulk tank handlers described in § 1135.9 (b) and (d);

(c) Such receipts do not exceed the lesser of 5 percent of his Class I utilization during the month or 5,000 pounds;

(d) Does not reconstitute or convert milk products into fluid milk products except to increase by the addition of nonfat dry milk the nonfat milk solids content of its own farm production or of fluid milk products received from other sources; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1135.11 [Reserved]

§ 1135.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for disposition as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1135.9 (b), (c) or (d); or

(3) Diverted from a pool plant in accordance with § 1135.13.

(b) “Producer” shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person who produces milk that is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1135.44(a)(8)(iii) and the corresponding step of § 1135.44(b); or

(3) Any person who produces milk that is reported as diverted to an other order plant if any portion of such person’s milk so moved is assigned to Class I under the provisions of such other order or the other order designates such person as a producer under such order.

§ 1135.13 Producer milk.

Producer milk means the skim milk and butterfat in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant;

(b) Received at a pool plant from a handler described in § 1135.9(c);

(c) Received by a handler described in § 1135.9(c) in excess of the quantity delivered to pool plants;

(d) Received by a handler described in § 1135.9(d) that is not diverted pursuant to paragraph (f) of this section;

(e) Diverted from a pool plant for the account of the handler operating such plant to another pool plant; or

(f) Diverted from a pool plant to a nonpool plant by a pool plant operator or a handler described in § 1135.9 (b) or (d), subject to the following conditions:

(1) Milk of a dairy farmer who was not a “producer” in the preceding two months shall not be eligible for diversion until one day’s production of milk is physically received at a pool plant;

(2) During each of a dairy farmer’s first three months as a “producer” under this order, and after any period of two months or longer that a dairy farmer is not a “producer” under this order, milk of the dairy farmer shall

not be eligible for diversion unless during the month one day's production of milk of such dairy farmer is physically received as producer milk at a pool plant;

(3) The total quantity of milk diverted by a cooperative association during any month may not exceed 80 percent of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of the producer milk which the associations cause to be delivered to pool plants or diverted from pool plants during the month if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is to be effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative according to a method approved by the market administrator;

(4) The total quantity of milk diverted during the month by a proprietary bulk tank handler described in § 1135.9(d) may not exceed 80 percent of the producer milk that the handler causes to be delivered to or diverted from pool plants during the month;

(5) The operator of a pool plant may divert for its account any milk that is not under the control of a cooperative association or a proprietary bulk tank handler that diverts milk during the month pursuant to paragraphs (f)(3) and (4) of this section. The total quantity so diverted during any month may not exceed 80 percent of the producer milk received at or diverted from such pool plant during the month that is eligible to be diverted by the plant operator; and

(6) Any milk diverted in excess of the limits prescribed in paragraphs (f) (3), (4), and (5) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk. Otherwise, the total milk diverted by the handler on the last day of the month, then the second-to-last day, and so on in daily allotments will be

excluded until all of the over-diverted milk is accounted for.

[46 FR 28612, May 28, 1981, as amended at 46 FR 62811, Dec. 29, 1981; 50 FR 36044, Sept. 5, 1985; 51 FR 12835, Apr. 16, 1986]

§ 1135.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1135.9 (c) and (d), pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1135.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1135.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1135.40(b)(1)) for which the handler fails to establish a disposition.

§ 1135.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section *fluid milk product* means any milk products in fluid or frozen form containing less than 9 percent butterfat, that are in bulk or are packaged, distributed and intended to be used as beverages. Such products include, but are not limited to: Milk, skim milk, lowfat milk, milk drinks, buttermilk, and filled milk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50 percent total milk solids), or reconstituted.

(b) The term *fluid milk product* shall not include:

(1) Plain or sweetened evaporated milk, plain or sweetened evaporated skim milk, sweetened condensed milk or skim milk, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

[58 FR 27896, May 11, 1993]

§ 1135.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

[58 FR 27896, May 11, 1993]

§ 1135.17 Filled milk.

Filled milk means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1135.18 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk for its members; and

(c) To have its entire activities under the control of its members.

§ 1135.19 [Reserved]

§ 1135.20 Commercial food processing establishment.

Commercial food processing establishment means any facility other than a milk or filled milk plant, to which bulk fluid milk products and bulk fluid cream products are disposed of, or producer milk is diverted, that uses such

receipts as ingredients in food products and has no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages. Producer milk diverted to commercial food processing establishments shall be subject to the same provisions relating to diversions to plants, including but not limited to, provisions in §§ 1135.13, and 1135.41.

[58 FR 27896, May 11, 1993]

HANDLER REPORTS

§ 1135.30 Reports of receipts and utilization.

On or before the 9th day after the end of the month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for such month:

(a) Each handler qualified pursuant to § 1135.9(a) shall report for each pool plant operated by the handler the quantities of skim milk and butterfat contained in or represented by:

(1) Producer milk received at such plants or diverted by the handler to other plants, and the protein content of such milk;

(2) Producer milk received at such plants from handlers qualified pursuant to § 1135.9 (c) and (d), and the protein content of such milk; and

(3) Fluid milk products and bulk fluid cream products from other pool plants and other source milk received at such plants.

(b) Each handler qualified pursuant to § 1135.9 (b), (c), or (d) shall report the quantities of producer milk received and the butterfat and protein contained therein.

(c) Each handler submitting reports pursuant to paragraphs (a) and (b) of this section shall report the utilization or disposition of all milk, filled milk, and milk products required to be reported, and inventories on hand at the beginning and end of each month in the form of fluid milk products and products specified in § 1135.40(b)(1).

(d) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that

would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(e) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

[46 FR 28612, May 28, 1981, as amended at 59 FR 15324, Apr. 1, 1994]

§ 1135.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler described in § 1135.9 (a), (b), (c), and (d) shall report to the market administrator, in the detail prescribed by the market administrator, the following information showing for each producer for such month:

- (1) His/her name and address;
- (2) The number of days on which milk was received from such producer;
- (3) The total pounds of milk received from such producer;
- (4) The average butterfat and protein content of his/her milk;
- (5) In the case of cooperative associations, the identity of producers for whom the cooperative association is authorized to collect payment pursuant to § 1135.73; and
- (6) The amount and nature of any deductions authorized in writing by the producer to be made from payments due such producer for milk delivered.

(b) Each handler operating a partially regulated distributing plant who elects to make payments pursuant to § 1135.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

[46 FR 28612, May 28, 1981, as amended at 59 FR 15324, Apr. 1, 1994]

§ 1135.32 Other reports.

In addition to the reports required pursuant to §§ 1135.30 and 1135.31, each handler shall report such other information as the market administrator

deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1135.40 Classes of utilization.

Except as provided in § 1135.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1135.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section;

(2) In packaged fluid milk products in inventory at the end of the month; and

(3) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product or any product containing artificial fat, fat substitutes, or 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section and in bulk concentrated fluid milk products in inventory at the end of the month;

(3) In bulk fluid milk products and bulk fluid cream products disposed of or diverted to a commercial food processor if the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification. Otherwise, such uses shall be Class I;

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, and any similar soft, high-moisture cheese resembling cottage cheese in form or use;

(ii) Milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in one-quart containers or larger and intended to be used in soft or semi-solid form;

(iii) Aerated cream, frozen cream, sour cream and sour half-and-half, sour cream mixtures containing nonmilk

items, yogurt and any other semi-solid product resembling a Class II product;

(iv) Eggnog, custards, puddings, pancake mixes, buttermilk biscuit mixes, coatings, batter, and similar products;

(v) Formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically sealed containers;

(vi) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products; and

(vii) Any product not otherwise specified in this section.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cream cheese and other spreadable cheeses, and hard cheeses of types that may be shredded, grated, or crumbled, and are not included in paragraph (b)(4)(i) of this section;

(ii) Butter, plastic cream, anhydrous milkfat and butteroil;

(iii) Any milk product in dry form, except nonfat dry milk;

(iv) Evaporated or sweetened condensed milk in a consumer-type package and evaporated or sweetened condensed skim milk in a consumer-type package; and

(2) In inventory at the end of the month of unconcentrated fluid milk products in bulk form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (b)(4) (i) through (iv) of this section, that are disposed of by a handler for animal feed;

(4) In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (b)(4) (i) through (iv) of this section, that are dumped by a handler. The market administrator may require notification by the handler of such dumping in advance for the purpose of having the opportunity to verify such disposition. In any case, classification under this paragraph requires a han-

dler to maintain adequate records of such use. If advance notification of such dumping is not possible, or if the market administrator so requires, the handler must notify the market administrator on the next business day following such use;

(5) In fluid milk products and products specified in paragraph (b)(1) of this section that are destroyed or lost by a handler in a vehicular accident, flood, fire, or in a similar occurrence beyond the handler's control, to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator;

(6) In skim milk in any modified fluid milk product or in any product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to §1135.15 and the fluid cream product definition pursuant to §1135.16; and

(7) In shrinkage assigned pursuant to §1135.41(a) to the receipts specified in §1135.41(a)(2) and in shrinkage specified in §1135.41 (b) and (c).

(d) *Class III-A milk.* Class III-A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

[58 FR 27897, May 11, 1993, as amended at 58 FR 63292, Dec. 1, 1993]

§ 1135.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1135.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph

(a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from handlers described in § 1135.9 (c) and (d));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from handlers described in § 1135.9 (c) and (d) and in milk diverted to such plant from another pool plant, except that, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handlers; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1135.9 (b) or (c) or a proprietary bulk tank handler is the handler pursuant to § 1135.9(d), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and protein and butterfat tests determined from farm bulk tank samples, the applicable percentage for the cooperative association or the proprietary bulk tank handler shall be zero.

[46 FR 28612, May 28, 1981, as amended at 59 FR 15324, Apr. 1, 1994]

§ 1135.42 Classification of transfers and diversions.

(a) *Transfers and diversions (including deliveries by a handler described in § 1135.9(d)) to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or from a handler described in § 1135.9(d) to a pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk, and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computation pursuant to § 1135.44(a)(12) and the corresponding step of § 1135.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1135.44(a)(7) and the corresponding step of § 1135.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or diverter-handler received during the month other source milk to be allocated pursuant to § 1135.44(a) (11) or (12) or the corresponding steps of § 1135.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I,

subject to adjustments when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1135.40.

(c) *Transfers and diversions to producer-handlers and to exempt distributing plants.* Skim milk or butterfat in the following forms that is transferred or diverted by a handler described in § 1135.9 (a), (b), or (d) to a producer-handler under this or any other Federal order or to an exempt distributing plant shall be classified:

(1) As Class I milk, if moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (a) and (b) of this section are met, transfers or diversions

in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section;

(a) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to §1135.30 for the month within which such transaction occurred; and

(b) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(b) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(c) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(d) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(b) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class II utilization, and then to Class III utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class II utilization, then to any remaining Class III utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

[46 FR 28612, May 28, 1981, as amended at 58 FR 27897, May 11, 1993]

§ 1135.43 General classification rules.

In determining the classification of producer milk pursuant to §1135.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to §1135.30 and shall compute separately for each pool plant, and for each handler pursuant to §1135.9 (b), (c), and (d) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§1135.40, 1135.41, and 1135.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk of a handler pursuant to §1135.9 (b), (c), or (d) shall be determined separately from the operations of any pool plant operated by such handler.

(d) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignments under §1135.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §1135.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

[46 FR 28612, May 28, 1981, as amended at 58 FR 27897, May 11, 1993; 58 FR 63292, Dec. 1, 1993]

§ 1135.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in §1135.9(a) for each of the handler's pool plants separately and of each handler described in §1135.9 (b), (c), and (d) by allocating the handler's receipts of skim milk and butterfat to its utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in §1135.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in:

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(ii) Packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in §1135.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the

pounds of skim milk in products specified in § 1135.40(b)(1) in packaged form and in bulk concentrated fluid milk products that were in inventory at the beginning of the month, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in bulk concentrated fluid milk products and in other source milk (except other source milk received in the form of an unconcentrated fluid milk product or a fluid cream product) that is used to produce, or added to any product specified in § 1135.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1135.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II.

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Bulk concentrated fluid milk products and other source milk (except other source milk received in the form of an unconcentrated fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1135.40(b)(1) that was not subtracted pursuant to paragraphs (a)(4), (a)(5) and (a)(6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2)(i) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order

plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount;

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1135.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(2)(ii), (a)(5) and (a)(7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received.

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this paragraph (a)(1) exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section;

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1135.45(a) or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes the pounds of skim milk in Class II and Class III combined shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computation pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant and from 9(d) handlers according to the classification of such products pursuant to § 1135.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

[46 FR 28612, May 28, 1981, as amended at 58 FR 27898, May 11, 1993]

§ 1135.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1135.44(a)(12) and the corresponding step of § 1135.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1135.43(d) and

§ 1135.44 on the basis of such report, (including any reclassification of inventories of bulk concentrated fluid milk products), and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler as described in § 1135.9 (a), (b) and (d) who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) Report to each cooperative association that so requests, on or before the 12th day after the end of each month, the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handlers.

[46 FR 28612, May 28, 1981, as amended at 58 FR 27898, May 11, 1993]

CLASS AND COMPONENT PRICES

§ 1135.50 Class and component prices.

The class prices for the month per hundredweight of milk shall be as follows:

(a) The Class I price shall be the basic formula price pursuant to § 1135.51(a) for the second preceding month plus \$1.50.

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus \$0.30.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

(d) *Class III-A price.* The Class III-A price for the month shall be the average Western nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

(e) The skim milk price per hundredweight shall be the basic formula price for the month pursuant to § 1135.51(a) less an amount computed by multiplying the butterfat differential computed pursuant to paragraph (f)(3) of this section by 35.

(f) The butterfat price per pound shall be the total of:

(1) The skim price computed in paragraph (e) of this section divided by 100; and

(2) The butterfat differential computed pursuant to paragraph (f)(3) of this section multiplied by 10.

(3) Compute a butterfat differential rounded to the nearest one-tenth cent, by multiplying the current month's butter price by 0.138, and subtract from the result an amount determined by multiplying 0.0028 by the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1135.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

(g) The milk protein price per pound shall be computed by subtracting the butterfat price, multiplied by 3.5, from the basic formula price and dividing the result by the percentage of protein in the milk on which the basic formula price is based, as announced by the Dairy Division. The resulting price shall be rounded to the nearest whole cent.

[46 FR 28612, May 28, 1981, as amended at 47 FR 42975, Sept. 30, 1982; 51 FR 12836, Apr. 16, 1986; 58 FR 63292, Dec. 1, 1993; 59 FR 15325, Apr. 1, 1994; 60 FR 6612, Feb. 2, 1995; 60 FR 18978, Apr. 14, 1995]

§ 1135.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1135.50(f)(3) and rounded to the nearest cent, plus or

minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile

Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divided by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

[60 FR 18978, Apr. 14, 1995]

§ 1135.52 [Reserved]

§ 1135.53 Announcement of class and component prices.

The market administrator shall announce publicly:

(a) On or before the 5th day of each month, the Class I price and the Class II price for the following month, and the Class III and Class III-A prices for the preceding month.

(b) On or before the 5th day after the end of each month, the basic formula price, the prices for skim milk and butterfat, and the milk protein price.

[59 FR 15325, Apr. 1, 1994, as amended at 60 FR 6612, Feb. 2, 1995]

§ 1135.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

DIFFERENTIAL POOL AND HANDLER
OBLIGATIONS

§ 1135.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler described in § 1135.9(a) with respect to each of the handler's pool plants and for each handler qualified pursuant to § 1135.9(b), (c), or (d) an obligation to the pool by combining the amounts computed as follows:

(a) Multiply the hundredweight of producer milk assigned to Class I milk pursuant to § 1135.44(c) by the difference between the Class I price and the Class III price;

(b) Multiply the hundredweight of producer milk assigned to Class II milk pursuant to § 1135.44(c) by the difference between the Class II price and the Class III price;

(c) Add or subtract, as appropriate, the amount that results from multiplying the pounds of producer milk in Class III-A by the amount that the Class III-A price is more or less, respectively, than the Class III price;

(d) Multiply the skim milk price by the hundredweight of producer skim milk assigned to Class I milk pursuant to § 1135.44(a);

(e) Multiply the milk protein price by the pounds of protein in producer skim milk assigned to Class II and Class III pursuant to § 1135.44(a). The pounds of protein shall be computed by multiplying the hundredweight of skim milk so assigned by the average percentage of protein in all producer skim

milk received by the handler during the month;

(f) With respect to skim milk and butterfat overages assigned pursuant to § 1135.44(a)(14) and (b):

(1) Multiply the total pounds of butterfat by the butterfat price;

(2) Multiply the skim milk pounds assigned to Class I by the skim milk price;

(3) Multiply the protein pounds associated with the skim milk pounds assigned to Class II and III by the milk protein price;

(4) Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price and the Class III price; and

(5) Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price;

(g) With respect to skim milk and butterfat assigned to shrinkage pursuant to § 1135.44(a)(9) and (b):

(1) Multiply the total pounds of butterfat by the butterfat price;

(2) Multiply the skim milk pounds assigned to Class I by the skim milk price;

(3) Multiply the protein pounds associated with the skim milk pounds assigned to Class II and III by the milk protein price;

(4) Multiply the combined skim milk and butterfat pounds assigned to Class I by the difference between the Class I price and the Class III price;

(5) Multiply the combined skim milk and butterfat pounds assigned to Class II by the difference between the Class II price and the Class III price; and

(6) Subtract the Class III value of the milk at the previous month's protein and butterfat prices;

(h) Multiply the difference between the Class I price and the Class III price by the combined pounds of skim milk and butterfat assigned to Class I pursuant to § 1135.43(d) and subtracted from Class I pursuant to § 1135.44(a)(7)(i) through (iv) and (b), excluding:

(1) Receipts of bulk fluid cream products from an other order plant;

(2) Receipts of bulk concentrated fluid milk products from pool plants, other order plants, and unregulated supply plants; and

(3) Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1135.76(a)(5) or (c);

(i) Multiply the difference between the Class I price and the Class III price by the combined pounds of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(7)(v) and (vi) and § 1135.44(b);

(j) Multiply the difference between the Class I price and the Class III price by the combined pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1135.43(d) and § 1135.44(a)(7)(i) and by the pounds of skim and butterfat subtracted from Class I pursuant to § 1135.44(a)(11) and (b), excluding the skim milk and butterfat in receipts of bulk fluid milk products from unregulated supply plants to the extent an equivalent quantity of skim milk and butterfat disposed of to any such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying \$1.00 (but not more than the difference between the Class I price and the Class III price) by the combined pounds of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1135.43(d); and

(l) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products re-

ceived at the plant during the prior month.

[59 FR 15326, Apr. 1, 1994]

§ 1135.61 Computation of weighted average differential price.

A weighted average differential price for all milk received from producers shall be computed by the market administrator as follows:

(a) Combine into one total the values computed pursuant to § 1135.60 (a) through (c) and (f) through (l) for all handlers who filed reports pursuant to § 1135.30 for the month and who made the payments pursuant to § 1135.71 for the preceding month;

(b) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(c) Divide the resulting amount by the sum, for all handlers, of the total hundredweight of producer milk and the total hundredweight for which values were computed pursuant to § 1135.60(j); and

(d) Subtract not less than 4 cents nor more than 5 cents per hundredweight of milk included under paragraph (c) of this section. The result shall be the weighted average differential price.

[59 FR 15326, Apr. 1, 1994]

§ 1135.62 Computation of producer protein price.

A producer protein price shall be computed by the market administrator each month as follows:

(a) Combine into one total the values computed pursuant to § 1135.60(d) and (e) for all handlers who filed reports pursuant to § 1135.30 and who made payments pursuant to § 1135.71 for the preceding month;

(b) Divide the resulting amount by the total pounds or protein contained in producer milk; and

(c) Round to the nearest whole cent. The result shall be the producer protein price.

[59 FR 15327, Apr. 1, 1994]

§ 1135.63 Announcement of the weighted average differential price, the producer protein price, and an estimated uniform price.

The market administrator shall announce on or before the 14th day after the end of each month the following prices for such month:

- (a) The weighted average differential price;
- (b) The producer protein price; and
- (c) An estimated uniform price per hundredweight of milk computed by adding the weighted average differential price to the basic formula price.

[59 FR 15326, Apr. 1, 1994]

PAYMENTS FOR MILK

§ 1135.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the “producer-settlement fund” into which he shall deposit the appropriate payments made by handlers pursuant to §§ 1135.71, 1135.74, 1135.75, and 1135.76 and out of which he shall make all payments due handlers pursuant to §§ 1135.72, and 1135.75.

[59 FR 15327, Apr. 1, 1994]

§ 1135.71 Payments to the producer-settlement fund.

On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount as specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

- (a) The total obligation of the handler for such month as determined pursuant to § 1135.60.
- (b) The sum of:
 - (1) The value computed by multiplying the weighted average differential price by the hundredweight of producer milk received from handlers qualified pursuant to § 1135.9(c) and from producers during the month;
 - (2) The value computed for the protein contained in the producer milk included under paragraph (b)(1) of this section at the producer protein price; and
 - (3) The value at the weighted average differential price of the hundredweight of skim milk and butterfat for which a

value is computed pursuant to § 1135.60(j).

[59 FR 15327, Apr. 1, 1994]

§ 1135.72 Payments from the producer-settlement fund.

On or before the 18th day after the end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed for such handler pursuant to § 1135.71(b) exceeds the amount computed pursuant to § 1135.71(a). If at such time the balance in the producer-settlement fund is insufficient to make all of the payments pursuant to this section, the market administrator shall reduce uniformly such payment and shall complete such payment as soon as the necessary funds become available.

[59 FR 15327, Apr. 1, 1994]

§ 1135.73 Payments to producers and to cooperative associations.

Each handler shall pay for milk received from producers and cooperative associations as follows:

- (a) On or before the last day of the month, each handler shall pay to each producer from whom milk was received during the first 15 days of the month not less than the Class III price per hundredweight for the preceding month.
- (b) On or before the 19th day after the end of each month, each handler shall pay to each producer from whom milk was received during the month, a sum computed as follows:
 - (1) Multiply the butterfat price for the month by the total pounds of butterfat in milk received from the producer;
 - (2) Multiply the producer protein price for the month by the total pounds of protein in such milk;
 - (3) Multiply the weighted average differential price for the month multiplied by the hundredweight of such milk;
 - (4) Subtract payments made to the producer pursuant to paragraph (a) of this section;
 - (5) Subtract deductions for marketing services pursuant to § 1135.86; and

(6) Subtract proper deductions authorized in writing by such producer.

(c) On or before the second day prior to the dates specified in paragraphs (a) and (b) of this section, each handler shall pay a cooperative association for milk from producers who market their milk through the cooperative and who have authorized the cooperative to collect payments on their behalf an amount equal to the sum of the individual payments otherwise payable to such producers pursuant to paragraphs (a) and (b) of this section.

(d) In the event a handler has not received full payment from the market administrator pursuant to § 1135.72 by the 19th day of the month, the handler may reduce pro rata the payments to producers pursuant to paragraphs (b) and (c) of this section by not more than the amount of such underpayment. Following receipt of the balance due from the market administrator, the handler shall complete payments to producers not later than the next payment date provided under this paragraph.

(e) In making payments to individual producers as required by this section, each handler shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month involved, and the identity of the handler and the producer;

(2) The total pounds of milk received from the producer and the pounds of butterfat and protein contained therein;

(3) The minimum rates at which payment is required pursuant to this section;

(4) The rates used in making payment, if such rates are other than the required applicable minimums;

(5) The amount (or rate per hundred-weight) of each deduction claimed by the handler, including any deduction claimed under § 1135.86, together with an explanation of each deduction; and

(6) The net amount of the payment to the producer.

[46 FR 28612, May 28, 1981, as amended at 59 FR 15327, Apr. 1, 1994]

§ 1135.74 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1135.30(b) and 1135.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants, handlers pursuant to § 1135.9 (b) and (d), and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted milk that are made from nonfluid milk products and which are then disposed of as route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the estimated uniform price; and

(5) Add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant less \$1.00 (but not to be less than the Class III price) and the

Class III price. For any reconstituted milk that is not so labeled, the Class I price shall not be reduced by \$1.00. Alternatively, for such disposition, payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed (but not to be less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1135.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant, a handler described in § 1135.(b) and (d), and an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this

section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1135.60 shall be priced at the uniform price or estimated uniform price of the respective order regulating the handling of milk at the transferee-plant, with such uniform price or estimated uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest Class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1135.60 for such handler shall include, in lieu of the value of other source milk specified in § 1135.60(j) less the value of such other source milk specified in § 1135.71(b)(2), a value of milk determined pursuant to § 1135.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1135.7(b), subject to the following conditions:

(A) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1135.30(b) and 1135.31(b) similar reports for each such nonpool supply plant;

(B) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(C) The value of milk determined pursuant to § 1135.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1135.50(f)(3), for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1135.50(f)(3), for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

(c) Any handler may elect partially regulated distributing plant status for any plant with respect to receipts of nonfluid milk ingredients assigned to Class I use under § 1135.43(d). Payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed (but not to be less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

[46 FR 28612, May 28, 1981, as amended at 58 FR 27898, May 11, 1993. Redesignated and amended at 59 FR 15327, Apr. 1, 1994; 60 FR 6612, Feb. 2, 1995; 60 FR 18979, Apr. 14, 1995]

§ 1135.75 Adjustments of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts or other verification discloses errors resulting in money due the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

[46 FR 28612, May 28, 1981. Redesignated at 59 FR 15327, Apr. 1, 1994]

§ 1135.76 Charges on overdue accounts.

Any unpaid obligation pursuant to §§ 1135.71, 1135.74, 1135.75, 1135.76, 1135.85, and 1135.86, shall be increased 1 percent each month beginning with the day following the date such obligation was due under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously made pursuant to this section. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

[46 FR 28612, May 28, 1981. Redesignated and amended at 59 FR 15327, Apr. 1, 1994]

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1135.85 Assessment for order administration.

As his pro rata share of the expenses of administration of the order, each handler shall pay to the market administrator on or before the 13th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

§ 1135.86

(a) Producer milk (including such handler's own production);

(b) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to §1135.43(d) and other source milk allocated to Class I pursuant to §1135.44 (a)(7) and (a)(11) and the corresponding steps of §1135.44(b), except such other source milk that is excluded from the computations pursuant to §1135.60 (h) and (j); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to §1135.74(a)(2).

[46 FR 28612, May 28, 1981, as amended at 58 FR 27899, May 11, 1993; 59 FR 15327, Apr. 1, 1994]

§ 1135.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments directly to producers (other than himself) pursuant to §1135.73, shall deduct 7 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to all milk received from producers' farms during the month, and shall pay such deductions to the market administrator on or before the 13th day after the end of such month. Such moneys shall be expended by the market administrator to provide for market information and to verify the weights, samples, and tests of milk of producers who are not receiving such services from a cooperative association.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 16th day after the end of each month shall pay such deductions to the cooperative association rendering such services, accompanied by a statement

showing the quantity of milk for which a deduction was computed for each producer.

PART 1136 [RESERVED]

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

Subpart—Order Regulating Handling

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